IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.2868 of 2003

1.Indian Oil Corporation Ltd.,
having Divisional Office at
No.500, Anna Salai
Teynampet, Chennai 600 018.

2.S. Sridhar
Assistant Manager (Sales)
Indian Oil Corporation Ltd.,
Chennai Divisional Office
No.500, Anna Salai
Teynampet, Chennai 600 018. .. Appellants

vs.

1.M/s. Kamala Filling Station
499, Pantheon Road
Egmore, Chennai 600 008
rep. By Mr. Kumarasamy, Partner.

2.The Deputy Controller of
Weights and Measures
D.M.S. Officer Compound
Teynampet, Chennai 600 006.

3.Chennai Tourists Car
Operators Association
rep. By its Secretary
499 Pantheon road
Egmore, Chennai 8. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice P.K. Misra made in W.P.No.22930 of 2002 dated 14.08.2003 to issue a writ of certiorari calling for the records comprised in the proceedings of the first respondnt dated 8.6.2002 in MDR 141 abd quash the same as illegal.

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For appellants : Mr. R. Krishnamurthy, Senior Counsel
for Mr. Abdul Saleem

For respondents : Mr. R. Parthasarathy

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JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 14.08.2003 made in W.P.No.22930 of 2002, in and by which the learned Judge quashed the letter terminating the dealership agreement and allowed the writ petition.

2. For the sake of convenience, the parties are referred to hereinafter as arrayed in the writ petition.

3. Brief facts of the case are:

According to the petitioner, it is a partnership firm had originally entered into a Dealership agreement with the Indian Oil Corporation (in short, IOC) in 1968 and on the reconstitution of the petitioner firm, the agreement as a Retail Outlet Dealer was continuing. While so, on 18.05.2002, an inspection was conducted by the Field Officer of the Office of the Assistant Manager (Sales), IOC, Chennai-18. In the inspection it was found that in one of the delivery pumps out of the 5 delivery pumps installed by the petitioner, the totaliser seal was not found. Based on the inspection held on 18.05.2002, the Divisional Office, IOC, issued a show cause notice to the writ petitioner on 21.05.2002 stating that during inspection on 18.05.2002 it was found that the totaliser seal in "Z" line M.S. Pump was found to be tampered with and the petitioner was operating the dispensing unit without the totaliser seal and thereby committed breach of the terms, conditions, covenants and stipulations contained in the dealership agreement and that such action has damaged the image of the IOC apart from being prejudicial to the interest and good name of the Corporation. The show cause notice also mentions certain breaches of the dealership agreement on 03.04.1999, 05.08.2000, 20.09.2000 and 02.02.2002. Based on this, the petitioner was called upon to show cause as to why the dealership agreement should not be terminated invoking the rights available under the terms and conditions of the said petrol/HSD Dealership Agreement.

4. The petitioner replied to the show cause notice on 04.06.2002, denying the irregularities pointed out. Apart from explaining the reasons for earlier instances, the petitioner highlighted the incident that took place on 18.05.2002 stating that this was only tampering of seal of the totaliser, which is installed for the benefit of the petitioner to know the sales which takes place in a day and the same was tampered by two employees.

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Complaints were filed against the two employees even on 17.05.2002, and there was no loss caused to the Corporation. The two employees had given confession statements and have been taken to custody. Without proper consideration of the reply, IOC has passed the impugned order on 08.06.2002, terminating the petrol/HSD Pump Dealer agreement dated 23.07.1986. The petitioner was also called upon to settle the accounts immediately. Questioning the said order, the petitioner filed W.P.No.22930 of 2002.

5. The Manager (Retail) of the Indian Oil Corporation filed counter affidavit on behalf of the Indian Oil Corporation, wherein it is stated that the Dealership agreement with the petitioner was terminated in view of the irregularities committed by him. It is the responsibility of the Corporation to ensure the weights and measures and whether seals are intact in the dispensing units and whenever the seals are found to be tampered with, sales and supplies are to be suspended forthwith. The petitioner had committed similar irregularities on three occasions and on each occasion, after affording adequate opportunity, the Corporation imposed appropriate penalty. Even with regard to the incident on 18.05.2002, for the removal of the totaliser seal, the petitioner was issued show cause notice and after considering his explanation, taking note of the gravity of the violation, the order was passed terminating the dealership.

6. The learned Judge, by order dated 14.08.2003, after finding that the IOC has terminated the agreement in hot taste and in arbitrary manner, allowed the writ petition. Questioning the said order, IOC has filed the present appeal.

7. Heard Mr. R. Krishnamurthy, learned senior counsel for the appellant / IOC and Mr. R. Parthasarathy, learned counsel for the contesting first respondent/writ petitioner.

8. The only point for consideration in this appeal is, whether the IOC is justified in terminating the petrol/HSD Pump dealership agreement dated 23.07.1986 and whether the learned Judge is right in quashing the same by allowing the writ petition?

9. Mr.R.Krishnamoorthy, learned senior counsel appearing for the appellant at the foremost pointed out various clauses in the Petrol/HSD Pump Dealer Agreement dated 23.7.1986. Among several clauses he pressed into service the following clauses:

> "43. The dealer undertakes faithfully and promptly to carry out, observe and perform all directions or rules given or made from time to time by the Corporation for the proper carrying on of the dealership of the Corporation. The Dealer shall scrupulously observe and comply with all laws, rules, regulations and requisitions

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of the Central/State Government and of all authorities appointed by them or either of them including in particular the Chief Inspector of Explosives, Government of India and/or Municipal and/or any other local authority with regard to the storage and sale of such petroleum products.

44 to 46. xxxx

47. The Dealer shall be solely responsible for and shall himself bear all expenses of and in connection with the Dealership business, including administration, office, insurance premia, telephone, licence or other fees, rates, taxes and all other charges and outgoings of every kind connected with the said business and shall pay the same promptly and without fail. The dealer shall also be solely responsible for any breach or contravention by himself, his servants or agents of any laws, rules, regulations or bye-laws passed or made by the Central and or State Government and/or Municipal local and/or other authorities as may be applicable from time to time to the business including, without prejudice to the generality of the foregoing, the concerned Authorities respectively appointed under the Petroleum Act, Payment of Wages Act, Shops and Establishments Act, Factories Act and the Workmen's Compensation Act or any statutory modifications or re-enactments of the said Statutes or Rules and the Corporation shall not be responsible in any manner for any liability arising out of non-compliance by the Dealer with the same. ....

48. The Dealer shall at his own cost maintain an adequate and competent staff to attend to the work of filling the Corporations products into the customers' vehicles and for providing certain free service to the customers in accordance with the general instructions given or laid down by the Corporation from time to time.

49 to 55. xxxx

56. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely,

(a) to (h) xxx

(i) If the dealer shall deliberately contaminate or tamper with the quality of any of the Corporation's

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products.

(j) xxxx

(k) If the Dealer shall either by himself or by his servants or Agents commit or suffer to be committed any act which in the opinion of the General manager of the Corporation for the time being in Madras, whose decision shall be final is prejudicial to the interest or good name of the Corporation or its products; the General Manager shall not be bound to give reasons for such decision.

10. Though clause 67 of the agreement enables the parties to go for arbitration in case of any dispute, in view of the fact that the writ petition was admitted and disposed of on merits and the writ appeal was admitted even in the year 2003, the parties cannot be directed to avail arbitration clause at this juncture. In fact, the learned senior counsel for the appellant did not raise this issue seriously.

11. Even among the above referred clauses, clause-47 makes it clear that the dealer shall be solely responsible for any breach or contravention by himself, his servants or agents of any laws, rules, regulations and bye-laws passed or made by the State Government or Central Government, Municipality, local or other authorities.

12. Now, let us consider the violations committed by the dealer/writ petitioner. In the show-cause notice dated 21.5.2002 it is stated that, on 18.5.2002 during the inspection of RO, the totaliser seal in the "Z" line MS pump was found to be tampered with and operating the dispensing unit without the totaliser seal being in tact. It is further stated that the petitioner thus committed breach of the terms, conditions, covenants and stipulations contained in the agreement. It is also stated that such acts damage the image of Indian Oil Corporation and the said acts are prejudicial to the interest and good name of the Corporation. In the show-cause notice reference was made to the breaches committed on earlier occasions. Pursuant to the said show-cause notice, the petitioner submitted a reply on 4.6.2002. Though in the reply, the petitioner highlighted the earlier breaches of the Dealership Agreement, since the impugned action is based on the breach that took place on 18.5.2002, there is no need to mention the explanation of the petitioner with reference to the earlier ones. In respect of the inspection and the violation that taken place on 18.5.2002, the petitioner sent the following reply:

"Later we came to know that one of the cashier Kandeepan with the help of Ramu a pump boy has misappropriated a sum of Rs.22,792/- by tampering the

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seal. Both of them were handed over to police and the case, i.e., being investigated by Inspector Mr.Venkatraman of Egmore Police station (F2). They have been remanded into custody as per the FIR enclosed (Crime No.515/2002 u/S.408 IPC) in the 14th Metropolitan Court, Egmore and both of them have come out on bail and the case is under progress. We understand that both the accused have confessed that they have tampered the totaliser seals and misappropriated the money without the knowledge of the dealer. I am herewith enclosing a Xerox copy of the FIR filed at Egmore Police Station for your perusal. Even though we are not indulged in any malpractice the present situation has put me in a very embarrassing position which I think you would understand and help us to run the outlet in a smooth manner.

Thanking you,

Yours faithfully,
(I.R.PRAKASH)
Partner"

13. As rightly pointed out by Mr.R.Krishnamoorthy, learned senior counsel for the appellant, the petitioner had admitted that its men, viz., Kandeepan, Cashier and Ramu, Pump Boy tampered the totaliser seal and misappropriated money to the extent of Rs.22,792/-. No doubt, the petitioner stated that the same had happened without the knowledge of the petitioner/dealer. However, as pointed out, the tampering of totaliser had been admitted by the servants of the dealer. We have already referred to clause-47 of the Agreement, which makes it clear that the dealer alone is solely responsible for any breach or contravention of his servants or agents. Further, as rightly pointed out by the learned senior counsel for the appellant, the dealer had admitted the charge levelled in the show-cause notice dated 21.05.2002.

14. It is relevant to mention that in the light of the clear and categorical admission of the guilt viz., tampering the totaliser by the servants of the writ petitioner/dealer, as pointed out by the Hon'ble Supreme Court in Aligarh Muslim University v. Mansoor Ali Khan [AIR 2000 SC 2783:(2000) 7 SCC 529], no further enquiry is required to be conducted. In the said decision in para-28, the Hon'ble Supreme Court held that by issuing notice the respondent therein will not have any acceptable answer and therefore issuance of notice is to be treated as a useless formality. Following the said decision of the Supreme Court, in Kannan,E. v. Government of Tamil Nadu [(2006) 2 MLJ 590], one of us (N.Paul Vasanthakumar,J.), after finding that the petitioner gave voluntary statement admitting the charges, observed that the principle of audi alteram partem need not be followed. In the case on hand, in spite of categorical admission of tampering the totaliser seal by the

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servants of the dealer, the Indian Oil Corporation, in order to give further opportunity, issued a show-cause notice and on receipt of reply from the petitioner, passed an order on 8.6.2002, terminating the agreement.

15. Now, let us consider whether the order of termination contains any acceptable reason, to be interfered with on the ground of "bereft of details". Before considering the said issue, it is to be noted that the authority like, Indian Oil Corporation cannot be equated with a judicial forum requiring to deal with all the pleadings of the parties, contentions/arguments and to give reasons for each and every issue. In the case on hand, admittedly, the petitioner was given an opportunity by issuing show-cause notice and in fact, pursuant to the same, the petitioner submitted a reply on 4.6.2002. In the first paragraph of the termination order, the Chief Divisional Manager, Indian Oil Corporation referred to the show-cause notice dated 21.5.2002 and reply of the petitioner dated 4.6.2002 and after carefully considering the contentions found in the reply, arrived at a conclusion that the explanation is not satisfactory. Though the Officer has not adverted to those details mentioned in the show-cause notice and the reply, it cannot be construed that the authority has not considered all the details/information furnished or adverted to. It is relevant to mention that the authority has also referred all the irregularities committed by the dealer on three earlier occasions. Those details show the date and different nature of irregularities as well as the action taken by IOC. It is not in dispute that in all three occasions, the dealer has not challenged the action taken/punishment imposed on him.

16. It is also relevant to point out that before arriving the conclusion terminating the Dealership Agreement, apart from considering the show-cause notice, reply and earlier irregularities, the authority, viz., the Chief Divisional Manager, Indian Oil Corporation, also adverted to various clauses in the dealership agreement viz., clauses 20, 43, 47, 48, 56(a), 56(i) and 56(k). It is not the case of the dealer that it is not aware of those terms and conditions, particularly when it is a party to the agreement. In such circumstances, it cannot be claimed that the impugned order of termination is bereft of details or reasons.

17. The last irregularity relates to an incident that took place on 18.5.2002, viz., removal of totaliser seal in "Z" line MS pump. It is not in dispute that it is the responsibility of the Indian Oil Corporation to ensure that weight and measures as well as seals are in tact in dispensing units and whenever the seals are found to be tampered with, the sales and supply are to be suspended forthwith and action taken as per the Marketing Discipline Guidelines for RO/SKO Dealerships of Public Sector Oil Marketing Companies. It is true that the Marketing Discipline Guidelines

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applicable to all dealers of public sector oil marketing companies. According to the learned learned counsel for the writ petitioner, those guidelines are not part of the agreement and at the most the same are to be treated as the internal instructions of the Indian Oil Corporation. Clause-6 in Chapter 6 of the Marketing Discipline Guidelines for RO/SKO Dealerships of Public Sector Oil Marketing Companies deals with the situation where totaliser seals are found to be tampered with. If totaliser seals are found tampered with, the said clause (6) provides for (i) suspension of sales and supplies of all products for 30 days along with a fine of Rs.50,000/- in the first instance; (ii) fine of Rs.1 lakh and suspension of sales and supplies of all products for 45 days in the second instance; and (iii) termination in the third instance. In this regard it is relevant to point out , clause 43 of Dealership Agreement, wherein the dealer undertook faithfully and promptly to carry out, observe and perform all directions or rules given or made from time to time by the Corporation for the proper carrying on of the dealership of the Corporation. The dealer further undertakes that he shall scrupulously observe and comply with all laws, rules, regulations and requisitions of the Central/State Government and of all authorities appointed by them including the Chief Inspector of Explosives, Government of India, and/or Municipal and/or any other local authority with regard to the storage and sale of such petroleum products. In these circumstances, in view of the fact that the petitioner had committed three irregularities and appropriate action was taken prior to the irregularity committed on 18.5.2002, we are of the view that the Indian Oil Corporation is justified in terminating the dealership agreement, particularly when the servants of the petitioner tampered the totaliser seal.

18. In the light of the above discussion, we are unable to accept the conclusion of the learned Judge that the impugned termination order does not indicate as to why the explanation furnished by the petitioner is not acceptable. For the reasons mentioned above, we are of the view that the order contains all the required details and it cannot be presumed that the authority, viz., Chief Divisional Manager has not applied his mind, nor adverted to relevant materials as claimed by the petitioner and as observed by the learned Judge. On the other hand, the details available in the show-cause notice as well as in the order of termination clearly show that the dealer was given number of opportunities to correct itself and to conduct the business as per the laid down norms of the Corporation. It is further seen that the advice given to the dealer did not yield any fruitful result and the dealer continued to be careless and was conducting business according to its whims and fancies.

19. The Indian Oil Corporation being a corporate sector cannot permit anyone to bring disrepute to the name and goodwill of the Corporation and affect the interests of the general public and the

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Corporation cannot be a silent spectator and on the other hand, it is the duty of the Corporation to correct the situation and the dealer in order to serve the general public which is expected of by them. We are satisfied that since the dealer continued to be incorrigible, the Corporation had to ultimately resort to terminate the dealership awarded to it as the reply of the dealer was found not satisfactory. We are unable to agree with conclusion of the learned Judge that the termination order was passed in hot-taste and arbitrary manner. On the other hand, we are satisfied that taking note of the interest of public and in view of agreed terms and conditions and also considering the previous irregularities, after affording adequate opportunity and after considering the merits of the reply, the Chief Divisional Manager rightly terminated the dealership agreement. Considering the fact that the irregularity viz., tampering of totaliser seal in Z-line MS pump, not only causes disrepute to the Corporation, but also affects the public interest, we are of the view that the order of termination of dealership agreement needs no interference. In such circumstances, interference by the learned Judge cannot be sustained, consequently, the order of the learned Judge dated 14.8.2003 made in W.P.No.22930 of 2002 is set aside and the writ appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Deputy Controller of
Weights and Measures
D.M.S. Officer Compound
Teynampet, Chennai 600 006.

1 cc to Satish Parasaran, Advocate, sR. 19480
1 cc to Amand, Abdul & Vinodh, Advocate, sR. 19738

W.A.No.2868 of 2003

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